

MT LEGISLATIVE HISTORY

Chapter 442 1985

Bill (H) 442 S _____

Original bill & hist. C

H. Committee on Judiciary

S. Committee on Judiciary

Hearing Date(s) Jan 29 ✓ C

Hearing Date(s) Mar 27 ✓ C

Feb 16 ✓ C

Mar 28 ✓ C

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_____ C

Date Out Feb 16 ✓ C

Mar 28 ✓ C

Did this bill originate in an interim committee? Yes No

Committee _____

Report _____

STATUS SHEET

FORTY-NINTH LEGISLATIVE SESSION

COMMITTEE ON JUDICIARY

HOUSE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CON- CURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CON- CURRED IN DATE
HB 380	1/23/85	2/15/85 2/16/85	2/16/85	2/16/85					
HB 390	1/23/85	1/31/85	1/31/85	1/31/85					
HB 395	1/23/85	1/31/85 2/4/85	2/4/85			2/4/85			
HB 400	1/23/85	2/12/85 2/20/85	2/23/85		2/20/85	<i>Re-referred back to Comm.</i>			2-27
HB 408	1/23/85	1/28/85	1/28/85	(WITHOUT RECOMMENDATION AND AS AMENDED)					
HB 413	1/23/85	2/6/85 2/8/85	2/8/85		2/8/85 AS AMEND.				
HB 425	1/23/85	1/28/85	1/28/85	1/28/85					
HB 426	1/23/85	1/28/85	1/28/85	1/28/85					
HB 438	1/23/85	1/28/85	1/29/85	1/29/85					
HB 439	1/23/85	1/29/85	1/29/85	1/29/85					
HB 440	1/23/85	2/7/85 1/29/85	2/7/85	2/7/85					
HB 441	1/23/85	1/29/85	1/29/85			1/29/85			
HB 442	1/23/85	2/16/85 1/29/85	2/16/85			2/16/85			
HB 443	1/23/85	2/7/85 1/29/85	2/7/85			2/7/85			
HB 444	1/23/85	1/30/85 2/8/85	2/8/85	2/8/85					
HB 445	1/23/85	1/30/85	1/30/85			1/30/85			

Rep. O'Hara moved that HB 585 DO PASS. The motion was seconded by Rep. Gould and carried 13-4. (See roll call vote.)

ACTION ON HOUSE BILL NO. 431: Rep. Keyser moved that HB 431 DO PASS. The motion was seconded by Rep. O'Hara. Rep. Brown made a substitute motion for a DO NOT PASS. The motion was seconded by Rep. Keyser. Rep. Brown said the bill doesn't provide enough notice. There being no further discussion, the question was called and the motion passed with Reps. Poff and Hannah dissenting.

ACTION ON HOUSE BILL NO. 341: Rep. Gould moved that HB 341 be referred back to the house on second reading. The motion was seconded by Rep. O'Hara.

Rep. Cobb informed the committee that the sponsor of the bill wished to have the following amendment adopted by the committee. On page 1, line 15 delete "person to whom" and insert "holder of" and delete "is issued". The purpose of the amendment was for clarification. However, following further discussion, Rep. Cobb withdrew his motion to amend.

Without any objection from the committee, HB 341 was referred back to the house.

ADJOURN: Upon motion of Rep. Keyser, and that motion having been seconded, the meeting adjourned at 8:10 a.m.

* * *

Chairman Hannah called another executive session to order at 12:20 p.m. on Saturday, February 16, 1985 in Room 312-3 of the State Capitol. All members were present with the exception of Joan Miles who left her proxy vote with the chairman.

ACTION ON HOUSE BILL NO. 442: Rep. Brown moved that HB 442 DO NOT PASS. The motion was seconded by Rep. Montayne.

Rep. Bergene moved the following amendments:

1. Title, line 6.
Following: "BROUGHT"
Insert: "BY THE CHILD"

Following: "UNTIL"
Insert "2 YEARS AFTER"

Following: "CHILD"
Strike: "BECOMES" through "AGE" on line 7.
Insert: "ATTAINS THE AGE OF MAJORITY AND BY AN AGENCY OF THE
STATE UNTIL 2 YEARS AFTER AN APPLICATION IS MADE UNDER

DAILY ROLL CALL

HOUSE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985
EXECUTIVE SESSION - 7:00 a.m.

Date 2/16/85

NAME	PRESENT	ABSENT	EXCUSED
Tom Hannah (Chairman)	✓		
Dave Brown (Vice Chairman)	✓		
Kelly Addy	✓		
Toni Bergene	✓		
John Cobb	✓		
Paula Darko	✓		
Ralph Eudaily	✓		
Budd Gould	✓		
Edward Grady	✓		
Joe Hammond	✓		
Kerry Keyser	✓		
Kurt Krueger	✓		
John Mercer	✓		
Joan Miles	✓		
John Montayne		✓	
Jesse O'Hara	✓		
Bing Poff	✓		
Paul Rapp-Svrcek	✓		

DAILY ROLL CALL

HOUSE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 2/16/85

EXECUTIVE SESSION - 12:20 p.m.

NAME	PRESENT	ABSENT	EXCUSED
Tom Hannah (Chairman)	✓		
Dave Brown (Vice Chairman)	✓		
Kelly Addy	✓		
Toni Bergene	✓		
John Cobb	✓		
Paula Darko	✓		
Ralph Eudaily	✓		
Budd Gould	✓		
Edward Grady	✓		
Joe Hammond	✓		
Kerry Keyser	✓		
Kurt Krueger	✓		
John Mercer	✓		
Joan Miles	✓		✓
John Montayne	✓		
Jesse O'Hara	✓		
Bing Poff	✓		
Paul Rapp-Svrcek	✓		

TITLE IV-D OF THE SOCIAL SECURITY ACT FOR SERVICES TO
THE CHILD"

2. Page 2, line 3.

Following: "brought"

Insert: ": (a) by the child"

Following: "than"

Strike: "3"

Insert: "2"

3. Page 2, line 4.

Following: "majority"

Insert: "; or (b) by a state agency later than 2 years
after the first application is made under Title IV-D
of the Social Security Act for services to the child"

Rep. Bergene's motion to amend was seconded by Rep. Hammond.
Rep. Gould stated that he could not support the bill with
these amendments. The question was called, and the motion
to ammend carried with Reps. Brown, Hannah, Mercer, Gould,
Keyser and Montayne dissenting.

Rep. Hammond moved that HB 442 DO PASS AS AMENDED. The
motion was seconded by Rep. Darko, the question called,
and a voice vote taken. The motion carried with Reps.
Hannah, Mercer, Gould, Brown, and Keyser dissenting.

ACTION ON HOUSE BILL NO. 507: Rep. Keyser moved that HB 507
DO PASS. The motion was seconded by Rep. O'Hara. Rep.
Brown made a substitute motion to kill the bill. The motion
was seconded by Rep. Rapp-Svrcek and discussed.

Rep. Bergene moved a substitute motion to table HB 507.
The motion was seconded by Rep. Krueger. Following a
brief discussion, Rep. Bergene withdrew her motion to table.

A roll call vote was taken on the DO NOT PASS motion, and
it failed 9-9. Without objection, the committee reversed
its decision on the do not pass motion; but because it was a
tie vote, the bill will come out of committee WITHOUT
RECOMMENDATION.

ACTION ON HOUSE BILL NO. 366: Rep. Keyser moved that HB 366
DO PASS. The motion was seconded by Rep. O'Hara and dis-
cussed.

It was Rep. Addy's opinion that both HB 507 and HB 366 are
repealers. The question was called, and a roll call vote
taken on the do pass motion. The motion failed 8-10.
Without objection, Rep. Brown moved to reverse the vote

page 1 of 2

MR. SPEAKER:We, your committee on JUDICIARYhaving had under consideration HOUSE Bill No. 442FIRST reading copy (WHITE)
color**EXTEND PATERNITY STATUTE OF LIMITATIONS TO CHILD'S 21st YEAR**Respectfully report as follows: That HOUSE Bill No. 442

be amended as follows:

1. Title, line 6.

Following: "BROUGHT"

Insert: "BY THE CHILD"

Following: "UNTIL"

Insert: "2 YEARS AFTER"

Following: "CHILD"

Strike: "BECOMES" through "AGE" on line 7.

Insert: "ATTAINS THE AGE OF MAJORITY AND BY AN AGENCY OF THE STATE
UNTIL 2 YEARS AFTER AN APPLICATION IS MADE UNDER TITLE IV-D
OF THE SOCIAL SECURITY ACT FOR SERVICES TO THE CHILD"

2. Page 2, line 3.

Following: "brought"

Insert: ": (a) by the child"

DOORPASS

(continued)

page 2 of 2 (HB 442)

Following: "than"

Strike: "3"

Insert: "2"

3. Page 2, line 4.

Following: "majority"

Insert: " : or (b) by a state agency later than 2 years after the
first application is made under Title IV-D of the Social
Security Act for services to the child"

AND AS AMENDED,
DO PASS

process that is first filed in district court. A notice goes to third parties. The warrant is enforceable by the department against a third party who has been notified of its existence.

Rollowing further questions from the committee, hearing closed on HB 441.

CONSIDERATION OF HOUSE BILL 442: Rep. Jan Brown, chief sponsor for this bill, testified in its support. She said that HB 442 provides that a paternity action may be brought until the child becomes 21 years of age. A copy of her testimony was marked as Exhibit L and is attached hereto.

John McRae testified in support of this bill. He told the committee that approximately 40% of their caseload is paternity cases. A good percentage of those cannot be completed because the statute of limitations has expired. He said that a mother is generally a low income person, who does not have the money to pay the cost of going through the judicial process on her own. He said that is one of the reasons for doing away with the statute of limitations. The Montana Supreme Court has partially done this, but it should still be clarified in regard to the role of the Dept. of Revenue, said McRae.

There being no further proponents nor any opponents, Rep. Brown closed, and the floor was opened to questions.

In resonse to a question by Rep. Hannah, Mr. McRae stated that if paternity is never established, there is no obligation to support.

Rep. Hannah said that under HB 442, on page 2 of the bill, the existing language says that the action may not be brought later than three years after the birth of the child. So, if two years, eleven months following the birth of the child, the mother brings an action and the court upholds that action through the blood test, the total liability that father could have would be three years. Mr. McRae said that was correct just up to the time paternity is established. Rep. Hannah directed another question pertaining to this, and asked Mr. McRae if he didn't think this is a substantial increase in the potential liability to go from three years to 21 years. Mr. McRae stated that it was a distinct possibility.

There were further questions directed to the age portion of the bill.

Rep. Krueger asked if Mr. McRae would be opposed to some provision that put some limitation in relation to the State of Montana and how long they could bring that action regardless of the age of the child.

Mr. McRae stated that under the new federal law, the statute of limitations must not be any earlier than when the child reaches the age of 18.

Rep. Krueger asked if Mr. McRae thought the legislature would have problems in light of the federal mandate if it put a limitation in relation to the state. Mr. McRae said he thought that would create a problem.

There being no further questions, hearing closed on HB 442.

CONSIDERATION OF HOUSE BILL 443: Rep. Jan Brown, chief sponsor of this bill, appeared and offered testimony. A copy of her testimony is attached and marked Exhibit M. She said that this bill would require, in child support cases being enforced by the Department of Revenue, the withholding of the obligor's income whenever an arrearage occurs that is equal to or in excess of the amount of support payable for one month.

John McRae also testified in support of this bill. He told the committee that this bill is lengthy and detailed. The intent of the bill and of the Child Support Enforcement Amendments of 1984, on which it is based, is to ensure that the support of children takes the highest priority in the allocation of a responsible parent's income withholding procedures whenever a delinquency occurs equal to at least one month's support payment. Mr. McRae pointed out some of the other features of the bill. He pointed out that there are many benefits directed toward the obligor.

There being no further proponents nor opponents, Rep. Brown closed and the floor was opened to questions from committee.

In response to a question from Rep. Keyser on the venue provision in the bill, Mr. McRae said that if a case is contested, the hearing officer makes the ultimate decision as to where the hearing will take place.

Rep. Keyser further asked if in the rest of the statute there is any language from the department that was not

out that there is a statement of intent attached to the bill and moved that the statement be adopted. The motion was seconded by Rep. Gould and carried unanimously. Question was called on the bill itself, and all voted in favor of its passage except Rep. Brown.

ACTION ON HB 441: Rep. Hammond moved that HB 441 DO PASS. The motion was seconded by Rep. Addy and discussion followed. Rep. Mercer moved to adopt the amendment as proposed by the department. He agrees with the testimony offered earlier in support of this particular amendment. The motion was seconded by Rep. O'Hara and discussion followed.

Rep. Krueger spoke against this amendment because he feels it is not totally needed. Also speaking against the amendment was Rep. Brown, who feels it goes beyond the scope of the bill.

Brenda Desmond, staff researcher, commented at this point on the amendment. She said that it does deviate from the narrow original intent of the bill; however, it does not deviate from the broad intent of the bill, that is, enforcement of child support.

The question was called and a roll call vote taken. The motion carried 10-8.

Rep. Hammond further moved that HB 441 DO PASS AS AMENDED. The motion was seconded by Rep. Miles and carried with Reps. Brown and Montayne dissenting.

ACTION ON HB 438: Rep. O'Hara moved that HB 438 DO PASS. The motion was seconded by Rep. Montayne and carried unanimously.

ACTION ON HB 442: Rep. Hammond moved that HB 442 DO PASS. The motion was seconded by Rep. Addy. However, Rep. Addy moved to amend this bill on page 2, line 3, by striking the number "3" and inserting "18". His amendment would also include the reinserting of "the birth of". The amendment would also delete line 4 in its entirety. Mr. McRae stated that by cutting the age off at 18 years, any remedy a child has to pursue this matter by himself has been cut off.

Rep. Mercer spoke against the motion and made a substitute motion that we change on line 3 the number "3" to "2" years and leave everything else the same as initially proposed. Rep. Mercer said the reason for the amendment is that a child can't do anything until

WOMEN'S LOBBYIST FUND

Box 1099
Helena, MT 59624
449-7917



January 29, 1985

TESTIMONY IN SUUPORT OF HBs 438 - 444

Mr. Chairman and members of the House Judiciary Committee:

My name is Anne Brodsky and I am here today on behalf of the Women's Lobbyist Fund (WLF) to speak in support of House Bills 438-444. I am offering testimony to broadly endorse all of these bills as they are, as a package, a positive step in mitigating a big problem: the non-payment of child support orders (perhaps better said, child non-support). For many reasons, the problem of non-payment of child support orders is one which most often falls on women. This testimony addresses the problem in a general way.

The 1980 U.S. Census reported that less than one half of those known to have been owed child support in 1978 were actually receiving the full amount (averaging \$1800-\$2300 per year for 2 children); 23% received partial payment; and 28% received no payment at all. Here in Montana, the Department of Revenue now has a caseload of over 36,000 for child support enforcement services.

Rather than going away, the problem is increasing. It was predicted in an article by the National Conference of State Legislatures in July, 1983, that by the 1990s, less than 50% of children will spend their entire childhood with both parents and over 95% of the children with single parents will live with their mothers.

The problem of collecting child support obligations -- which becomes a societal problem, both economically and socially -- is based on many factors. I quote to you from an article entitled "Child Support? Forget It!" (Working Mother, Feb. 1983), in which one woman recounted her story as follows: "I've been to court so many times in the last five years that I've lost count. Each time I go back I lose at least half a day's work and usually a full day....Right now Steve hasn't paid me anything in two months... but I don't want to go to court again. I get so uptight each time that I can't sleep and my stomach's in knots....I wonder, should I just forget about child support and try to make it on my own? But as Luke grows older, my expenses grow too. You can't imagine the anxiety." This is the account of one woman. I have no doubt that her voice speaks for the many who are faced with the problem of enforcement of child support obligations.

HBs 438 - 444 are an encouraging step in addressing part of this very big problem. These bills take big steps in strengthening the state's mechanisms for enforcing these obligations.

For these reasons, the WLF urges you to pass HBs 438 - 444.

Mr. Chairman and Members of the Committee: For the record, I am Jan Brown, H.D. 46.

The 12 bills which you have before your committee today and tomorrow are the implementation bills for the federal Child Support Enforcement Amendments of 1984 (Public Law 98-378). Before presenting the bills, I would like to give you a brief background of child support enforcement, and I also have John McRae and Bill Harrington from the Child Suppt. Enf. Bureau to give you further information and respond to your questions following each bill.

Federal law requires that each state establish a Child Suppt. Enf. program. It is commonly referred to as the "IV-D Agency" after Title IV-D of the Social Security Act. Each state program receives 70% of its funding from the federal gvt. The IV-D agency is responsible for locating absent parents, establishing paternity, establishing child support obligations, and collecting and monitoring child support payments. The Montana IV-D Agency is the Child Support Enforcement Program, located within the Legal & Enforcement Division of the Dept. of Revenue.

Every year over 1 million American marriages end in divorce. 1 out of every American children will live in a single-parent home at some point during childhood. 95% of these will live with their mothers. Fewer than 10% of absent fathers pay court-ordered child support in full, voluntarily, after the first year.

Nationally, total child support obligations equal approximately \$9.9 billion a year; receipts total only \$6.6 billion. Of the more than 4 million women legally owed child support, 53% receive only partial payment and nearly 1/3 receive no payment at all. Non-receipt of child support is a major cause of poverty among women. When child support is not paid and a family falls below the poverty level, taxpayers become responsible for child support. The IV-D program collected \$2.03 billion in FY 1983, and thousands of families were able to leave the welfare roles.

The 1984 federal legislation is directed toward insuring that all parents with an obligation to pay child support live up to that obligation. The Act provides the enforcement tools necessary to make the payment of child support an automatic function.

If you would like additional background information or financial figures, the

The Child Support Enforcement Program was established in response to the changes taking place in the AFDC program. AFDC was established in the 1930's to provide for children who did not have the benefit of support from both parents. Assistance is available to families in which a responsible parent is dead, absent, disabled, or in some cases, unemployed.

When the AFDC program was first established, death of the father was the major basis for eligibility. Currently, over 80 percent of the families receiving AFDC are eligible because a parent is absent from the home, while over 30 percent of the children are being born of unmarried parents.

Federal law requires that each state establish a child support enforcement program. The responsible state government unit is commonly referred to as the IV-D agency. Each program receives 70 percent of its funding from the federal government. The state IV-D agency is responsible for locating absent parents, establishing paternity, establishing child support obligations, and collecting and monitoring child support payments.

The Montana IV-D and enforcement agency is called the Child Support Enforcement Program. Located within the Legal and Enforcement Division of the Department of Revenue, the Child Support Enforcement Program collects support on welfare and non-welfare cases in Montana, and throughout the United States.

THE PROBLEM OF CHILD SUPPORT

Each year over one million American marriages end in divorce, disrupting the lives of more than three million men, women and children. More than 40 percent of American marriages contracted in the 1980's are expected to end in divorce, and by the 1990's only 56 percent of the children in the United States will spend their entire childhood with both natural parents.

No fault divorce laws have shifted the focus of the legal process from moral questions of fault and responsibility to economic issues of ability to pay and financial need. Today fewer husbands and wives fight about who-did-what-to-whom; they are more likely to argue about the value of marital property, her earning capacity and his ability to pay.

When child support is not paid and a family falls below the poverty levels, taxpayers become responsible for child support. Without child support, the poverty level for mother only families rises from 12 percent to 18 percent. We believe that parents should pay for the support of their children to the extent possible.

In most divorce cases both spouses are represented by legal counsel. Unfortunately the children are almost never represented. Yet in most all cases, the children equally with the parents, suffer both economically and financially.

The Child Support Enforcement Amendments of 1984 which were passed by Congress in the fall are directed toward insuring that all parents with an obligation to support live up to that obligation. The Act provides the enforcement tools necessary to make the payment of child support an automatic function.

Since 1980, the Montana program has made great gains in its effort to collect child support. The following table illustrates the progress made, how that progress relates to the national average, and how such progress translates into a financial return for the State of Montana.



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Conference
of State
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New York State Assembly

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Information Release #9

July 1983

POVERTY: THE EFFECTS OF NONSUPPORT

If current trends continue, mothers and their children will compose almost 100 percent of the poverty population by the year 2000.¹ By 1990, only half of all American children will spend their entire childhood with both natural parents.² Over 95 percent of all children in single parent households will live with their mothers.³ These mothers are quickly beginning to swell the ranks of the povertied class. Diana Pierce in 1978 coined the phrase "feminization of poverty" to describe this phenomenon.

The above statistics have grim implications for state legislators who must deal with the aftermath of this new class of poor.* The regulation of state child support agencies, AFDC (Aid to Families with Dependent Children) payments, and proposed bills regarding child support enforcement are all types of legislation which eventually address the root of the "feminization of poverty"--the lack of support by an absent parent.

The descent into poverty by mothers and their children is clouded in myth. This information release seeks to explore the myths surrounding poor women and their children. Because a mother's standard of living will, for the most part, determine a child's standard of living, the links between a family's penury and nonsupport will be explored.

Throughout the '70s the myth of superwoman/mother invaded media consciousness. Women could do it all and still provide good homes for the 2.5 children. Of course, the father was there to help the mother with the housework, as well as providing financial and emotional support. However, the '70s myth of superwoman/mother faded quickly as the economic status of women did not significantly change. Women continue to earn only 59 cents for every dollar earned by men.⁵ And, two-thirds of women who work full-time earn less than \$10,000 a year.⁶ The '70s family underwent major changes, causing women who sought their security in the homefronts to be severely shaken. The status for women/mothers is reflected in statistics such as:

- Of white female headed families in 1978, 53.4 percent lived in poverty.

* For 1982 the poverty level for a four person family was \$9,860.00

- Of black female headed families in 1978, 69.5 percent lived in poverty.
- Between 1978 and 1980, the number of female headed households falling below the poverty line rose 150,000 per year--with all indications showing that this number will grow.⁷

Current economic indicators suggest that the number of single mothers who are poor will continue to increase. This will place special demands on public assistance transfers and public officials who will determine those transfers. In attempting to understand this new under-class of women, we might take a careful look at the myths which surround poor women.

Myth #1--Changes in the "Typical" Family Structure

It is no surprise to anyone that the American family has undergone major alterations in the last decade. A station wagon, house in the suburbs, two kids and a stay-at-home mother and working father may still equate to the American dream. Yet only 13 percent of American families fall into that classification.⁸ The largest growing family unit is a single-parent household. The American family looks like this:

- 50 percent of the nation's mothers work outside the home.
- 43 percent of all married women who work have children under the age of six.
- 20 percent of all children under 18 live in one-parent households (up from 8 percent in 1970).
- 18 million children live in homes of divorced or separated parents.⁹

Where then is the "typical" American family? The fastest growing family type is the single-parent family. In the 1950s, half of all female headed households were headed by widows.¹⁰ Between 1970 and 1980 the percentage of female headed households increased 82 percent for all families and 92 percent in black families.¹¹ Today widows head less than one-third of these households.¹² Most people are aware that one out of every two marriages end in divorce.¹³ What many are unaware of is that poor women have increasingly become the head of households.

The number of families with male heads of household (both husband/wife units and single males) fell from 3.2 to 2.6 million.¹⁴ However, the number headed by poor women with minor children increased from 1.8 to 2.7 million.¹⁵ Today more than one-half of the total number of poor families are headed by single mothers.¹⁶ Female-headed families have a poverty rate six times that of male-headed families.¹⁷ The number of single parents who were never married has soared 109 percent.¹⁸ Most of these women remain poor all of their lives.

Myth #2--The Economics of Divorce

Lenore Weitzman's careful study of new directions in family exconomics explores the downward mobility for women after divorce.

Up to the time of this study, many believed that a man strapped with maintenance or support payments fared poorly after divorce. This 1981 study produced the following disturbing figures:

- After one year of divorce, a women's standard of living decreases 73 percent.
- After one year of divorce, a man's standard of living increases 42 percent.

For median income families (\$20,000-29,000), the loss to divorced women is as follows:

- Women have a post-divorce income of less than one-half of what they had in marriage.
- Men live at 97 percent of their former standard.¹⁹

Also of note is the fact that only 14 percent of all women receive court ordered maintenance.²⁰ In less than 50 percent of divorces was there any marital property to divide.²¹ Even seven years after a divorce, women still experience a decline of 29 percent in terms of income needed to provide basic need. Men, on the other hand, experienced a 17 percent gain in terms of economic position.²²

In light of the fact that currently women have custody of the children in over 90 percent of all cases, the outlook for this newest family unit appears bleak.²³ Judith Cassetty, in her book The Parental Child-Support Obligation, suggests that if a child's financial stability is not threatened, then the psychological impact of divorce can be alleviated. However, economic indications, such as above, seemingly imply that there are not enough support or maintenance dollars ordered in divorced families to maintain the former standard of living.²³

One way to financially stabilize a single parent household would be the consistent receipt of child support payments. As Nancy Polikoff suggests in her article on child custody determinations, "The overall failure of child support enforcement has resulted in custodial mothers carrying virtually the sole economic responsibility for their children."²⁴

Myth #3--Child Support or Public Assistance is the Major Source of Income for Single Mothers

Court ordered child support is awarded in only 59.1 percent of all divorce cases where children are involved.²⁵

Actual income transfers into a single-parent household occur in this order:

1. Custodial parent's income;
2. Public assistance transfers;
3. Non-custodial parent's support.²⁶

Even after a divorced mother is awarded support payments, current statistics reveal that she is not likely to receive them. Recent studies estimate that 28 percent of all families never receive any support payments,²⁷ and another 23 percent receive partial payment²⁸--which can range from one support payment up to fulfilling 90 percent of the support obligation. Simple addition tells us that means less than 50 percent of 3.4 million women due child support received the full amount due.²⁹

Of significance is the fact that the full amount of support averages \$1,800 to \$2,300 per year for two children.³⁰ David Chambers further provides that:

In the United States in 1975, of five million mothers living with minor children and divorced, separated, remarried or never married, only about one-fourth received child support payments of any kind during the year and, of those who received anything, fewer than half received thirty dollars or more a week.³¹

The above figures are generally regarded as too low by many state officials responsible for child support collections, because these figures do not reflect the women who give up trying to collect. Nor do they reflect those women who have resorted to using private collectors (i.e. attorneys or collection agencies).³²

Recently many people have become increasingly concerned that men's rights in regard to custody and support have not been equitable. Custody is granted to mothers in over 90 percent of all uncontested divorce cases.³³ However, a California study indicates that in contested custody cases, men are awarded custody 65 percent of the time.³⁴ Increasingly, the first time fathers petition the court for custody is often after the issue of support has been raised. Joanne Schulman from the National Center on Women and Family Law has voiced concern that mothers may be agreeing to lower support awards in lieu of a long custody battle. Ms. Schulman worries that "Children suffer either way--by an unworkable joint custody arrangement or by the custodial parent's 'bartering away' of financial resources necessary for the child's support."³⁵

Without child support or with very low support orders, a woman may have to turn to public assistance to maintain her family.

Myth #4--AFDC is the Remedy to the Feminization of Poverty

This myth is wrought with cultural stereotypes. The myth is that women refuse to work, drive Cadillacs and have ten children to increase their grant amount. The reality is that the average mother receiving assistance:

- has two children (over 42 percent of AFDC families have only one child).³⁶
- receives assistance for 18 months.

- waits 18 months before seeking assistance.
- is working in 30 percent of these cases.³⁷

Further, over one-half of all mothers receiving AFDC payments have at least one child under the age of six.³⁸ Society usually encourages mothers with young children to work inside the home in order to provide a young child's nurturance and sustenance.

In 1933, Congress passed the Social Security Act, which included insurance for dependents and survivors (commonly known as aid to dependent children--AFDC). Originally this program was meant to aid widows and orphans. Today, however, AFDC families are comprised of 3 million women and 7.2 million children who receive no outside support.³⁹ Nationally, the average AFDC payment is \$256 a month for a family of about 4 members. Due to recent reductions in grant amounts in some states, that monetary grant averages less than \$100 a month.⁴⁰ These figures suggest that AFDC payments do not even come close to the needs of the poor and near poor. Further, the Children's Defense Fund reports that in Fiscal Year 1982 federal budget cuts have meant the following:

- 725,000 families lost their AFDC eligibility or had their grants reduced.
- In 20 states, loss of AFDC also meant loss of Medicaid benefits.
- A Congressional Budget Office study estimated that those households which lost AFDC eligibility also lost food stamps, housing assistance and Medicaid.⁴¹

Other federal programs such as CETA and WIN have been or will be phased out. Overall, in Fiscal Year 1982, 1.2 billion dollars were cut from AFDC programs and an additional 85 million was cut in Fiscal Year 1983.⁴²

With inconsistent child support payments and severe cutbacks in federal/state assistance, a mother's entry into the workforce may seem necessary. But what happens to women in the workforce?

Myth #5--Women Can Work and Make Up for Lost Support Payments

As the above statistics reveal, women do work. Many problems confront the single, working mother. Women, traditionally, have had a higher level of unemployment. Although unemployment is only slightly higher for white females than white males, female teenage minorities have the highest rate of unemployment. Once a woman finds work, salary statistics are dismal. Of the 2.38 million⁴³ women who work full-time, 53 percent earn less than \$5,000 a year. Of all income earners making over \$15,000, only 9 percent are women.⁴⁴ Twenty-one percent of female headed households with the head working full-time still fall below the poverty line.⁴⁵ And, one-third of all full-time working mothers with children under five are poor. So work is no sure way for a woman to break the poverty trap.⁴⁶

Another major problem with full-time working mothers is the lack of available child care. Assuming adequate child care can be found, the average day care cost in one California town is about one-half to three-fourths of what some women earn. In Colorado the cost for licensed day care is twice the amount of the average support award.⁴⁷

Even if women work, most salaries will not even cover subsistence level living for themselves, let alone their children.

Some of the reasons for the increasing rate of poverty among women have been cited: nonsupport, cutbacks in federal assistance, and low paying jobs. These problems combined with lack of consistent child support payments add to the rolls of poverty stricken women. Nevertheless, women are poor for different reasons than are men. The two fundamental reasons for poverty in women are:

1. Women are most often the custodial parent. This has a financial and emotional side: mothers must choose work to accommodate their children's lives. So, without support, many mothers are relegated to low paying jobs in an effort to accommodate their children's lives.⁴⁸
2. Women are grouped into occupations which pay poorly--80 percent of all women still work in pink collar jobs, i.e., clerical, waitressing, teaching. Men, on the other hand, can usually pull themselves out of poverty by working. Men are poor usually due to joblessness. When men work, they usually earn enough to support a family. Less than five percent of all families with a male wage earner are poor.⁴⁹

Single mothers are the fastest growing poverty group. The relationship of nonsupport and poverty is obvious.

The effective enforcement of child support payments is one way to ease the burden for poor mothers and their children.

The Child Support Enforcement Program

The child support enforcement program was established by Congress in 1975 by the addition of Part D to Title IV of the Social Security Act. The program was designed to assist custodial parents and dependent children to locate absent parents, verify paternity, and establish and enforce child support orders. Services are provided to all families in need of support, including those receiving Aid to Families with Dependent Children (AFDC) and those who apply for help in obtaining child support but do not receive AFDC.

The program is federally funded and state administered. Each state agency (commonly referred to as the IV-D agency) receives 70 percent matching funds from the federal government. All 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands and Guam operate child support program and have legislation which provides

for reciprocal enforcement of support obligations. At the time the AFDC program was first established the father's death was the major basis for eligibility. Currently, however, over 80 percent of the families receiving AFDC are eligible because a parent is absent from the home through divorce, separation or abandonment. Over 30 percent of the children receiving public assistance are born out of wedlock. If child support were being paid for all children receiving public assistance, the overall cost of the public assistance program (welfare) would be dramatically reduced. The regular payment of child support by non-custodial parents would enable families to discontinue their public assistance grants in some cases. States can reduce their welfare rolls and offset AFDC expenditures as support payments from absent parents are collected. HHS reports that for fiscal year 1980 support obligations were established in 373,691 cases, paternity was determined for 144,467 children and \$1.5 billion was collected in child support obligations. The national average for collections was \$3.30 for each dollar spent, making the program cost-effective in all but five states.

The effective collection of support payments enforces the financial responsibility of both parents. And, most people agree that responsible parents give a sense of security to a child.

Legislation is the cornerstone to a successful child support program. Each state can pass child support legislation tailored to the needs of the individual state and its citizens. Although the Office of Child Support Enforcement is a federally administered program, each state can pass legislation which conforms to the federal policy. This gives the state a unique political framework.

Examples of child support legislation include income assignment, paternity establishment, administrative processes, i.e., friend of the court and the adoption of uniform laws such as Uniform Reciprocal Enforcement of Support Act or the Uniform Parentage Act.

The NCSL Child Support Enforcement Project

The National Conference of State Legislatures Child Support Enforcement Project offers the following services and resources to state legislators and their staffs who desire to improve child support legislation:

- Technical assistance in policy research studies, testimony preparation, bill drafting, state workshops for developing and implementing child support legislation.
- An information clearinghouse containing abstracts, research reports, statistical information, significant court decisions, and guidance to resource people.
- Regular information releases, such as this, on special topics relating to child support enforcement.

FOR MORE INFORMATION

If you have any questions or desire further information, contact Deborah Dale, Child Support Enforcement Project, National Conference of State Legislatures, 1125-17th Street, Suite 1500, Denver, Colorado, 80202, (303) 292-6600.

Child Support Enforcement Amendments (P.L. 98-378)

Fact Sheet

With President Reagan's support, Congress has passed new legislation strengthening the nation's child support enforcement system. States will now be required to use strong, proven practices for collecting overdue child support payments—and new emphasis is put on interstate enforcement as well as services for all children needing support payments, whether or not their family is receiving public assistance.

Highlights of the new law:

All States Must Use Proven Enforcement Techniques

- **WAGE WITHHOLDING.** All states must provide for automatic withholding of child support payments overdue in an amount equal to one month's obligation. Advance notice must be provided to the absent parent. May include a fee to cover the employer's costs of withholding. May extend to other non-wage income.
- **EXPEDITED LEGAL PROCESSES.** States must use expedited judicial or administrative processes for obtaining and enforcing support orders. Expedited processes can also be used to establish paternity.
- **TAX REFUND OFFSETS.** States must provide for collection of overdue support from State income tax refunds.
- **LIENS.** States must have a process for imposing liens against real and personal property for overdue support, where appropriate.
- **SECURITY OR BONDS.** States must have procedures for requiring security, bond or other guarantee from parents with a pattern of overdue support.
- **REPORTS TO CREDIT BUREAUS.** At request of a credit bureau and after notifying absent parent, State must report overdue amounts over \$1,000. May report smaller amounts.

Improved Enforcement of Interstate Cases

- **REQUIRED TECHNIQUES.** States must have procedures for interstate enforcement of wage withholding. Other required techniques will also apply for enforcing interstate cases.
- **SHARED INCENTIVE PAYMENTS.** Interstate collections will be credited to both the initiating and responding states when calculating federal incentive payments.
- **SPECIAL PROJECTS.** Authorizes \$7 million in FY 1985, \$12 million in FY 1986, and \$15 million in FY 1987 for special demonstration projects testing innovative methods of interstate enforcement.

Equal Services for Welfare and Non-Welfare Families

- **INCENTIVE PAYMENTS.** Federal incentive payments to States, formerly applied only to AFDC cases, will now be based on collections for both welfare and non-welfare cases, as well as cost-effective program operation.
- **FEDERAL TAX OFFSET.** Collection of overdue support from Federal income tax refunds, previously available only for AFDC cases, can now be used for non-AFDC cases as well.
- **PUBLIC AWARENESS.** States must regularly publicize the availability of child support enforcement services.
- **REQUIRED TECHNIQUES.** Wage withholding and other required techniques are mandated for non-welfare as well as welfare cases.

continued

Improved Incentives for State Programs

- **PERFORMANCE-BASED PAYMENTS.** According to a General Accounting Office study, States have had "little incentive" under present Federal funding to improve their child support programs. At present, Federal incentive payments of 12 percent are made for AFDC collections only, without regard to cost-effectiveness of the program. Under the amendments, incentive payments will be based on formulas counting collections for non-AFDC as well as AFDC cases, plus cost-effectiveness of each program.
- **FEDERAL MATCHING FOR ADMINISTRATION.** Federal matching funds for administrative costs, now 70 percent, will be reduced to 68 percent in 1988 and 1989, and 66 percent in 1990 and thereafter. While still a generous Federal share, this more equal sharing by State and Federal Governments will encourage States to improve programs and emphasize performance incentives.
- **AUDITS AND PENALTIES.** Improved performance-based audits of State programs are required. Current 5 percent penalty for States with non-complying programs is replaced with graduated penalties. No penalty assessed if corrections are made within a standard time period.
- **STATE COMMISSIONS.** Governors are to appoint commissions to oversee child support enforcement systems, with broad representation of groups most affected.

Other Provisions

- To assist judges and other officials, States must develop suggested guidelines on appropriate support amounts for children.
- Requires States to charge an application fee up to \$25 for non-AFDC cases. The fee may be charged to the applicant, absorbed from State funds if applicant is unable to pay, or charged to the absent parent. Fees, which help offset administrative costs, are currently optional.
- States will have the option of imposing a late payment fee of 3 to 6 percent on all delinquent obligors.
- Social Security numbers of absent parents will be made available to State child support agencies on request.
- States must include medical support as part of child support orders when private health insurance is available to the non-custodial parent at reasonable cost.

Cost Impact

Total collections under the Federal-State child support enforcement program were a record \$2 billion in FY 1983. In FY 1986, the initial year of implementation for most of the legislative provisions, collections should increase to \$3 billion. In addition, from FY 1986 to 1989, some \$300 million in welfare costs will be avoided as child support is collected for needy families who would otherwise become eligible for AFDC. ■

FIVE YEAR CHILD SUPPORT ANALYSIS

	FY 1980	FY 1981	FY 1982	FY 1983	FY 1984
<u>COLLECTIONS</u>					
Total Distributions	1,500,037	1,579,820	1,652,965	2,351,067	2,973,797
Non-AFDC	685,118	658,744	524,102	615,516	697,581
AFDC to Recipient				7,513	5,367
AFDC Net Retained	814,919	921,076	1,128,863	1,728,038	2,270,849
Federal Share	516,075	592,069	735,072	1,129,085	1,467,259
State Share	223,205	255,956	306,208	465,276	623,480
County Share	75,639	73,051	87,583	133,677	180,110
<u>EXPENSES</u>					
Total Program Costs	1,037,550	1,150,059	1,067,986	1,152,138	1,326,284
Federal Share	778,162	862,544	800,990	817,811	928,400
State Share	220,599	240,102	229,159	291,434	358,896
County Share	38,789	47,413	37,837	42,893	38,988
Montana Cost Effective Ratio					
State Level	1.01	1.07	1.34	1.60	1.74
County Level	1.95	1.54	2.32	3.12	4.62
Incentives to Montana Paid from Federal Share	13,627	113,908	142,526	229,680	251,357
Cost Effective Ratio for General Fund	1.07	1.54	1.96	2.38	2.44

Beginning October 1, 1985 the incentive payment rate will change from 12% on AFDC collecti only to a maximum of 10% on both AFDC and Non-AFDC.

For further information: Contact Bill Harrington or Dennis Shober, Child Support Enforcem Program, P. O. Box 5955, Helena, MT 59604. Phone (406) 444-4614.

Mr. Chairman and Members of the Committee:

For the record, I am Jan Brown, House District 46.

House Bill 442 provides that a paternity action may be brought until the child becomes 21 years of age.

The Montana Supreme Court held in the 1981 case of State vs. Wilson that the statute of limitations for the establishment of paternity was unconstitutional. However, the Court went on to reason that the State's interest being primarily economic, the statute of limitations as against the State was constitutional. Consequently, if the child is 3 years or older, the State is unable to establish paternity.

The result is that in those cases the child may continue on welfare until age 18 and the State is without any present means to establish paternity, get support ordered, and thereby reimburse itself for welfare paid out. To correct this problem, Congress passed the new federal legislation which requires the state to do away with the statute of limitations on paternity establishment.

I have other proponents and staff persons to answer questions.

DAILY ROLL CALL

HOUSE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 1/29/85

NAME	PRESENT	ABSENT	EXCUSED
Tom Hannah (Chairman)	✓		
Dave Brown (Vice Chairman)	✓		
Kelly Addy	✓		
Toni Bergene	✓		
John Cobb	✓		
Paula Darko	✓		
Ralph Eudaily	✓		
Budd Gould	✓		
Edward Grady	✓		
Joe Hammond	✓		
Kerry Keyser	✓		
Kurt Krueger	✓		
John Mercer	✓		
Joan Miles	✓		
John Montayne	✓		
Jesse O'Hara	✓		
Bing Poff	✓		
Paul Rapp-Svrcek	✓		

CHAIRMAN--MAZUREK, JOE
NORMAL SCHEDULE==>

SITE: OLD SUPREME COURT ROOM DAYS: M-TU-W-TH-F

TIME: 10:00 A.M.-12 NOON

SECRETARY-STALEY, CINDY

--BILL NO--	REFER DATE--	HEARING DATE--	CONSIDERATION DATES--	COMMITTEE ACTION--	REREFERRED TO COMM--	DATE OUT--
HB0441	2/07	3/27	3/28	CONCUR AS AMENDED		3/28
BROWN, JAN			ENFORCEMENT OF ADMINISTRATIVE CHILD SUPPORT ORDERS THROUGH DISTRICT COURT			
HB0442	2/22	3/27	3/28	CONCUR		3/28
BROWN, JAN			EXTEND PATERNITY STATUTE OF LIMITATIONS TO CHILD'S 21ST YEAR			
HB0443	2/15	3/27	3/28, 3/28	CONCUR AS AMENDED		3/28
BROWN, JAN			INCOME WITHHOLDING FOR DELINQUENT CHILD SUPPORT PAYMENTS			
HB0444	2/14	3/27	3/28	CONCUR AS AMENDED		3/28
BROWN, JAN			NOTICE OF INCOME WITHHOLDING PROCEDURE INCLUDED IN ALL CHILD SUPPORT ORDERS			
HB0445	2/07	3/27	3/28	CONCUR AS AMENDED		3/28
BROWN, JAN			REQUIRING PERSON DELINQUENT IN CHILD SUPPORT PAYMENTS TO POST BOND			
HB0446	2/11	3/27	3/28	ADVERSE REPORT		3/28
BROWN, JAN			LIENS AGAINST REAL AND PERSONAL PROPERTY FOR UNPAID CHILD SUPPORT			
HB0447	2/25	3/27	3/28	ADVERSE REPORT		3/28
BROWN, JAN			GARNISH WORKERS' COMPENSATION BENEFITS FOR CHILD SUPPORT DEBTS			
HB0476	2/07	3/12		CONCUR		3/21
SPAETH, GARY			GIVING JUSTICES' CRTS. JURISDICTION WITH DIST. CRTS. IN MISDEMEANORS			
HB0481	2/21	3/20		ADVERSE REPORT		3/20
BRANDEWIE, RAY			MENTIONING SENTENCE TO JURORS; NO CHALLENGE FOR BELIEF ITS TOO SEVERE			
HB0507	3/05	3/14		ADVERSE REPORT		3/21
KEYSER, KERRY R.			REVISE LAWS RE: DISCRIMINATION IN INSURANCE			
HB0517	2/19	3/19		CONCUR AS AMENDED		3/23
HANSEN, STELLA JEAN			DISTRICT COURT CLERK MAY CHARGE \$5 CHILD SUPPORT HANDLING FEE			

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

March 27, 1985

The sixtieth meeting of the Senate Judiciary Committee was called to order at 10:10 a.m. on March 27, 1985, by Chairman Joe Mazurek in Room 325 of the Capitol Building.

ROLL CALL: All committee members were present with the exception of Senator Crippen.

CONSIDERATION OF HB's 438, 439, 440, 441, 442, 443, 444, 445, 446, and 447: Chairman Mazurek stated the hearing on these House Bills would be held simultaneously since the bills were similar and on the same topic. Representative Jan Brown, the sponsor of these bills, presented them to the committee in numerical order. She stated that these bills were put together as a package dictated by the federal government. These ten bills are the implementation bills for the federal Child Support Enforcement Amendment of 1984, Public Law 93-378. Federal law requires that each state have a child support program, commonly called the 4-D Agency after Title 4D of the Social Security Act. Montana's program is located within the Legal and Enforcement Division of the Department of Revenue. This agency is responsible for locating absent parents, establishing paternity, child support obligations, and collecting and monitoring child support programs. Representative Brown stated John McRae would answer any questions the committee might have. HB 438 is to offset child support debts against state income tax refunds. HB 439 is the consumer credit reporting agencies' access to child support debt information. HB 440 relates to enforcement of spousal support by the Department of Revenue. HB 441 is the enforcement of administrative child support orders through district court. HB 442 extends the paternity statute of limitations to a child's 21st year. HB 443 is the bill requiring low income withholding for delinquent child support payments. HB 444 is the notice of income withholding procedure included in all child support orders. HB 445 requires persons delinquent in child support payments to post bond. HB 446 puts liens against real and personal property for unpaid child support. HB 447 would garnish workers' compensation benefits for child support debts.

PROPOSERS: Anne Brodsky, Women's Lobbyist Fund, stated that they support all of these bills which mainly affect women. She testified that in 1980 the U.S. Census reported less than half of the people owed child support were collecting the full amount, 23 percent were receiving partial payment and 28 percent received no payment at all. There is a problem now regarding payment of child support; therefore, she stated they urged the committee to support these bills.

Questions on HB 442: Senator Mazurek asked if Title 4D of the Social Security Act is AFDC. Mr. McRae replied it is the welfare cases plus those others who are not on welfare that apply; thus, it broadens the scope.

Questions on HB 443: Senator Towe stated at the present time we do not have a withholding provision, but there is a federal law that mandates we include it. Mr. McRae replied that in Montana, as Representative Brown referenced, they do have a withholding type bill as stipulated in Title 4D, chapter 5, subpart 2. That particular act does not meet the federal standards. By adopting HB 442, we can conform with federal requirements.

Senator Towe asked if there were a hearing procedure if this procedure does not go into effect until the obligor were one month in arrears. Mr. McRae stated there is a hearing procedure and notice procedure throughout the whole bill. Senator Towe then asked if the hearing procedure is terminated when the obligor pays. Mr. McRae replied the procedure continues, the reason being to make sure the obligor is more prompt in the future.

Senator Towe asked about discretion. Mr. McRae answered the only area of discretion is found on page 9, line 8. Senator Mazurek asked what the source of the bill was. Mr. McRae stated no model was available, so they tried to adopt procedures from available bills and use their discretion as to which was best.

Senator Towe asked if federal law required withholding of just wages or if it included a broader spectrum. Mr. McRae answered federal law only requires withholding of wages and earnings; however, the state has elected to use a broader definition and include interest income, annuities, etc. Senator Towe asked how Representative Brown felt about striking everything but wages. Representative Brown replied she would prefer it were left as is but would not object if the committee did decide to strike the other types of earnings. Senator Towe then asked that would happen if the employer failed to comply with the order. Mr. McRae stated the employer would then be held liable, because it is required by federal act that they do comply. Senator Towe asked if this withholding had priority over all other types of withholding. Mr. McRae replied in reality, it had priority over everything except federal income tax.

March 27, 1985

Judiciary

AB 438-447

[illegible]

that money. Senator Mazurek responded you are applying the law as it exists now to what it would be under this bill. He doesn't think lawyers will use a contingency fee agreement in compensation cases like they have in the past. Senator Towe then questioned what might happen if you lose the case. Senator Shaw moved HB 778 be recommended BE CONCURRED IN AS AMENDED. The motion carried (see roll call vote attached as Exhibit 10).

FURTHER CONSIDERATION OF HB 353: Senator Brown moved HB 353 be removed from the table. Senator Mazurek pointed out it was tabled because if a person went in to commit a crime, you might as well not have burglary, because burglary is going into the house of another for committing an offense. Aggravated burglary is you intended to commit a felony. You eliminate one. Senator Blaylock asked why would we need to have aggravated burglary if you have burglary. Senator Mazurek responded we have burglary. This says if you went in to commit an offense, you have burglary. Sections 1 and 2 read essentially identically. Senator Brown pointed out subsections (a) and (b) qualify that he has to be armed. Mr. Petesch pointed out a weapon, as you remember from previous bills, can be anything. The motion to remove the bill from the table failed on a tie vote (see roll call vote attached as Exhibit 11).

FURTHER CONSIDERATION OF HBs 438-447: Mr. Petesch explained the federal law requires the state to have a support withholding procedure up to a maximum allowance. It requires that withholding has to be given priority. They require a determination of paternity at any time. They add tax refund deductions and liens against real or personal property. They require those, but they need not be used or applied when the state determines they would not be necessary to carry out the federal act. Senator Towe asked if the state makes a policy decision and they are not necessary to carry out the federal act, would they be necessary here? Mr. Petesch responded it says you need procedures, but they need not be used or applied in cases where the state determines so. It appears to be an administrative decision. Senator Towe suggested adding language to that effect at the end of these bills, which language would be referred to as the caveat insertion to be prepared by Mr. Petesch.

ACTION ON HB 438: Senator Daniels raised a question about a joint return and what would be done in a remarriage situation where the husband owes child support. The department said the existing practice was to amend the return to determine if the wife were entitled to half of the refund. Senator Brown moved HB 438 be recommended BE CONCURRED IN. Senator Mazurek asked why the parties couldn't make a reasonable effort to agree. You can't require them to file separately, because that will have an impact on the amount of the refund. Chairman Mazurek pointed out Dennis Shober, Child Support Enforcement Bureau; Bill

ACTION ON HB 441: Senator Towe submitted a proposed amendment to the committee (Exhibit 14). Senator Towe moved adoption of the amendment as proposed with the following change to the inserted sentence: ". . . the court may reconsider the order on its merits." Senator Daniels stated he liked the amendment and the change because this allows the court to review the order if the judge thinks something is fishy. Senator Mazurek questioned whether the court would grant the order if the judge thought it were fishy in the first place. The motion to amend carried unanimously. Senator Brown moved HB 441 be recommended BE CONCURRED IN AS AMENDED. The motion carried unanimously.

CKS
ACTION ON HB 442: Senator Daniels commented he didn't think a kid should be raised and then turn around and sue his parent. Mr. Petesch stated the federal government requires that paternity be determinable any time prior to the child's 18th birthday. Senator Mazurek pointed out this does limit the agency to two years after the application. Senator Pinsoneault moved HB 442 be recommended BE CONCURRED IN ~~AS~~ AMENDED. The motion carried unanimously.

ACTION ON HB 443: Senator Towe submitted proposed amendments to the committee (Exhibit 15). Mr. Petesch pointed out the federal government says you have to have the withholding procedure, but says the state can determine what wages means. Senator Towe moved adoption of the proposed amendments. Senator Mazurek stated what you do by this is you encourage independent contractors. Senator Towe contended this gives the department the ability to issue an order to an employer to withhold. He referred to page 4, lines 3-9. Senator Yellowtail asked about page 5, lines 7-10, subsection (2). Senator Towe explained that means that after this order comes, if you don't pay to the defendant, that is a gift and you have to pay it over again. Mr. McRae stated the primary essence is the timeliness of the action. We have to monitor the payments. What we have done is made a statement of what has been referred to as the law of the assignment process. Once the debtor is given notice of an assignment, if he still pays a third party, he is still obligated. Senator Towe asked about the consent of the spouse. Senator Mazurek said there is a problem with making it a gift, because you could get it back under any circumstances. Mr. McRae said many of these cases are welfare cases, and the money is properly payable to the state because of subrogation and assignment. The wife does not have the ability to accept these moneys, and it may affect her welfare assignment. Senator Yellowtail moved HB 443 be amended as follows:

1. Page 2, line 3.
Following: "including"
Strike: "but not limited to"
Following: "earnings"
Strike: ", "
Insert: "and"

March 28

35

19.....

MR. PRESIDENT

JUDICIARY

We, your committee on.....

HOUSE BILL

442

having had under consideration.....

No.....

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reading copy (

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(Senator Shaw)

EXTEND PATERNITY STATUTE OF LIMITATIONS TO CHILD'S 21ST YEAR

HOUSE BILL

442

Respectfully report as follows: That.....

No.....

BE CONCURRED IN

~~DO NOT PASS~~

~~DO NOT PASS~~

Senator Joe Mazurek

Chairman.